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AN ACT
RELATING TO CRIMINAL LAW; CREATING A NEW CRIMINAL OFFENSE
KNOWN AS OBTAINING IDENTITY BY ELECTRONIC FRAUD; INCREASING A
PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-16-24.1 NMSA 1978 (being Laws
2001, Chapter 138, Section 1) is amended to read:

"30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY
ELECTRONIC FRAUD.--

A. Theft of identity consists of willfully
obtaining, recording or transferring personal identifying
information of another person without the authorization or
consent of that person and with the intent to defraud that
person or another.

B. Obtaining identity by electronic fraud consists
of knowingly and willfully soliciting, requesting or taking
any action by means of a fraudulent electronic communication
with intent to obtain the personal identifying information of
another.

C. As used in this section:

(1) "fraudulent electronic communication"
means a communication by a person that is an electronic mail
message, web site or any other use of the internet that
contains fraudulent, false, fictitious or misleading

1 information that depicts or includes the name, logo, web site
2 address, email address, postal address, telephone number or
3 any other identifying information of a business, organization
4 or state agency, to which the person has no legitimate claim
5 of right; and

6 (2) "personal identifying information" means
7 information that alone or in conjunction with other
8 information identifies a person, including the person's name,
9 address, telephone number, driver's license number, social
10 security number, place of employment, maiden name of the
11 person's mother, demand deposit account number, checking or
12 savings account number, credit card or debit card number,
13 personal identification number, passwords or any other
14 numbers or information that can be used to access a person's
15 financial resources.

16 D. Whoever commits theft of identity is guilty of
17 a fourth degree felony.

18 E. Whoever commits obtaining identity by
19 electronic fraud is guilty of a fourth degree felony.

20 F. Prosecution pursuant to this section shall not
21 prevent prosecution pursuant to any other provision of the
22 law when the conduct also constitutes a violation of that
23 other provision.

24 G. In a prosecution brought pursuant to this
25 section, the theft of identity or obtaining identity by

1 electronic fraud shall be considered to have been committed
2 in the county:

3 (1) where the person whose identifying
4 information was appropriated, obtained or sought resided at
5 the time of the offense; or

6 (2) in which any part of the offense took
7 place, regardless of whether the defendant was ever actually
8 present in the county.

9 H. A person found guilty of theft of identity or
10 of obtaining identity by electronic fraud shall, in addition
11 to any other punishment, be ordered to make restitution for
12 any financial loss sustained by a person injured as the
13 direct result of the offense. In addition to out-of-pocket
14 costs, restitution may include payment for costs, including
15 attorney fees, incurred by that person in clearing the
16 person's credit history or credit rating or costs incurred in
17 connection with a civil or administrative proceeding to
18 satisfy a debt, lien, judgment or other obligation of that
19 person arising as a result of the offense.

20 I. The sentencing court shall issue written
21 findings of fact and may issue orders as are necessary to
22 correct a public record that contains false information as a
23 result of the theft of identity or of obtaining identity by
24 electronic fraud."

25 Section 2. EFFECTIVE DATE.--The effective date of

